

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MATTHEW J. DONLIN,

Plaintiff,

v.

CASE NO. 1:17-cv-00395-JCH-JHR

**PETCO ANIMAL SUPPLIES
STORES, INC., a Foreign
Profit Corporation,**

Defendant.

**DECLARATION OF CHRISTOPHER M. MOODY IN SUPPORT OF APPLICATION FOR FEES
INCURRED IN PROSECUTING MOTION TO COMPEL**

I, Christopher M. Moody, upon my oath and under penalty of perjury, state the following:

1. I am over the age of 18 and competent to make this declaration. The contents are true and accurate to the best of my knowledge and belief and are based on my own personal knowledge.

2. I am an attorney and a partner at Moody & Warner, P.C., counsel for Plaintiff Matthew J. Donlin in the above case. I submit this declaration as required by the Court's Memorandum Opinion and Order granting Plaintiff's Motion to Compel [Doc. 35, filed October 10, 2017] and awarding attorneys' fees and costs incurred in bringing the motion.

3. I graduated from Duke University School of Law in 1983 and have been licensed to practice law in New Mexico since September 1983. I am also licensed to practice law in California and Colorado. I am admitted to practice before all the state courts in New Mexico, California, and Colorado and also by the United States District Courts for the District of New Mexico, the Northern District of California, the Central District of California, the Southern District of California and the Tenth Circuit Court of Appeals.

4. Since 1983 I have engaged in a litigation practice primarily focused on labor and employment law. I worked for and was a partner in a variety of law firms in New Mexico (including Poole, Tinnin & Martin, Hinkle, Cox, Eaton, Coffield & Hensley and Noeding &

Moody) before founding Moody & Warner, P.C. in 2003. Moody & Warner focuses its practice on labor and employment matters of all types, including class and collective actions, and I have been continuously employed as a partner at Moody & Warner, P.C. since March 2003.

5. I have been recognized for my accomplishments by various professional organizations. I am A.V. rated by Martindale-Hubble and have been recognized by Superlawyers for many years. I and my law firm are highly rated by Chambers USA, both for representation of employees and for representation of employers, and I have been rated by Chambers for a number of years. I am also a member of the Multi-Million Dollar Advocates Forum.

6. In the course of my practice I have litigated for and counseled both employers and employees in a wide variety of labor and employment matters, including wage and hours cases, statutory discrimination and retaliation matters, whistleblower claims under both federal and state whistleblower protection statutes, False Claims Act retaliation claims, wrongful termination and officer and director breach of fiduciary cases among others. I cannot say for certain how many litigation matters I have handled, but I estimate it at several hundred. I have tried numerous cases to conclusion before juries.

7. I have also handled administrative matters before federal and state administrative agencies such as the National Labor Relations Board and the U.S. Department of Labor and arbitrations before arbitrators in numerous states. I have litigated cases before courts in New Mexico, Colorado, Arizona, Utah, California, Montana and the District of Columbia.

8. I have handled a number of complex employment class and collective actions in New Mexico and elsewhere. Most notably, I was certified as co-class counsel for plaintiff classes in two large national employment discrimination cases in the United States District Court for the District of Columbia: *Augst-Johnson, et al. v. Morgan Stanley & Co.* and *Carter, et al. v. Wells Fargo Advisors, LLC, et al.* Both cases involved large classes with well in excess of 2,000 class members and were resolved with substantial injunctive relief and settlement funds in the tens of millions of dollars.

9. I am familiar with legal fees charged by lawyers in this locality, including fees charged by lawyers who handle employment litigation such as this case. Lawyers that I am familiar with in this locality who handle cases of this type and have my level of experience charge anywhere from \$250 per hour to over \$400 per hour. The rate I am charging on this case, \$350 per hour, falls in the middle of this range. I regularly charge clients on an hourly basis for legal work and although my hourly rate varies depending on the type of work, I have a number of clients that I charge \$350 per hour for hourly fee work.

10. My current hourly rate has been approved by judges in both federal and state court. In August 2016 Judge Browning in the federal court in the case *Payne et al, v. Tri-State Careflight, LLC, et al.*, Case No. CIV 14-1055 JB/KBM, Memorandum Opinion of August 17, 2016), found \$350 per hour to be a reasonable hourly rate for me. In September 2017 Judge Mathew in state district court in Santa Fe in the case *Melissa Velasquez v. Regents of Northern New Mexico College*, Case No. D-117-CV-2015-0169, approved my hourly rate of \$350.

11. I have personally reviewed Moody & Warner's time and expense records reflecting its work on the Motion to Compel in this matter. A true and correct copy of time and expense record is attached as Exhibit 1. These records have been kept in the ordinary course of business using Moody & Warner's TABS software. Moody & Warner personnel record their time contemporaneously in increments of one-tenth of an hour. In reviewing Moody & Warner's time and expense records I exercised billing judgment and eliminated time entries that I deemed not appropriately chargeable in connection with bringing the Motion to Compel.

12. Exhibit 1 reflects that I spent a total of 28.0 hours in reviewing Defendant's discovery responses, determining which should be the subject of a motion to compel, researching and drafting the motion, reviewing Defendant's lengthy response and researching and drafting the reply. All of this time was reasonably and necessarily expended in connection with the Motion to Compel.

13. At my hourly rate of \$350 the total fees incurred in connection with the Motion to Compel is \$9,800.00. New Mexico gross receipts tax on that amount at the currently applicable rate of 7.5% amounts to \$735.00. The fees and tax on the fees total \$10,535.00.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 13, 2017

/s/ Christopher M. Moody 10/13/2017

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I hereby certify that I have served a copy of this pleading on the following counsel of record by filing the same in the CM/ECF filing system this 13th day of October 2017:

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